IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2019

CORAM

THE HONOURABLE MR. JUSTICE M. DURAISWAMY

C.R.P.(PD) No.1897 of 2004 &
C.M.P.Nos.19973 to 19975 of 2004

Balasaraswathi ... Petitioner

v.

1. Rajendran

2. The Oriental Insurance Co. Ltd
Kumbakonam - 612 001
Thanjavur District ... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order dated 08.12.2003 in I.A.No.877 of 1996 in M.C.O.P.No.29 of 1992 on the file of the learned Sub-Judge, (Motor Accidents Claims Tribunal) at Ariyalur.

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For Petitioners : Mr.K.Venkatasubban
for M/s.Sarvabhauman Associates

For Respondents : R1- Died
R2 - No appearance

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O R D E R

Challenging the fair and decreetal order passed in I.A.No.877 of 1996 in M.C.O.P.No.29 of 1992 on the file of the learned Subordinate Judge (Motor Accidents Claims Tribunal), Ariyalur, the owner of the vehicle has filed the above Civil Revision Petition.

2. There were three claim petitions, viz., M.C.O.P. Nos. 29, 30 and 31 of 1992 on the file of the Motor Accidents Claims Tribunal, Ariyalur. On 18.03.1996, an *ex-parte* award was passed in each MCOP. The owner of the vehicle filed an application in each MCOP to set aside the *ex-parte* award. As there was delay, each application was accompanied by another application filed under section 5 of the Limitation Act. I.A.Nos. 877, 878 and 879 of 1996 are the three applications filed to condone the delay of 104 days in filing the applications under Order IX Rule 13 of the Civil Procedure Code. The Motor Accidents Claims Tribunal, by order dated 08.12.2003, dismissed the said applications. Challenging the same, the petitioner preferred Civil Revision Petitions in C.R.P.(NPD) Nos.1848, 1849 and 1897 of 2004. This Court, by order dated 28.02.2005 set

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aside the order passed in I.A.Nos. 878 and 879 of 1996 and allowed the same. Consequently, allowed the Civil Revision Petitions in C.R.P.(NPD) Nos.1848 and 1849 of 2004.

3. In all the three applications, the petitioner has given the very same reasoning for condoning the delay of 104 days in filing the application under Order IX Rule 13 of the Civil Procedure Code. Since this Court had accepted the reasoning given by the petitioner and allowed the applications in I.A.Nos. 878 and 879 of 1996, the other application, which is impugned in this Civil Revision Petition, i.e. I.A.No. 877 of 1996 is also liable to be allowed. Accordingly, the order passed in I.A.No.877 of 1996 in M.C.O.P.No.29 of 1992 is set aside and I.A.No.877 of 1996 stands allowed. Consequently, C.R.P.(NPD) No.1897 of 2004 is allowed.

4. During the pendency of the Civil Revision Petition, the 1st respondent-claimant had died on 21.04.1998. Hence, the petitioner filed Civil Miscellaneous Petitions in C.M.P.Nos.19973 to 19975 of 2004 to condone the delay of 2268 days in seeking to set aside the abatement, to set aside the abatement and to bring on record the legal representatives of the deceased-1st respondent in the Civil Revision Petition. Though notice

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was ordered to the legal representatives, service could not be completed on the legal representatives. In these circumstances, while closing the said petitions, I give liberty to the revision petitioner to file appropriate applications to bring on record the legal representatives of the 1st respondent-claimant in M.C.O.P.No.29 of 1992.

5. In view of the reasons stated above, the Civil Revision Petition is allowed and C.M.P.Nos.19973 to 19975 of 2004 are closed with liberty to the petitioner to file appropriate applications before the Motor Accidents Claims Tribunal to bring on record the legal representatives of the 1st respondent-claimant. No costs.

08.03.2019

Index : Yes/No

Speaking Order/Non Speaking Order

Rj

To
The Sub-Judge,
Motor Accidents Claims Tribunal
Ariyalur.

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M. DURAISWAMY,J.,

Rj

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